

REMARKS

Claims 1-13 and 15-26 are pending in the application. Claim 14 has been canceled. Claims 22-26 are new claims. No new matter has been added. In view of the present amendment and remarks, reconsideration of the rejections set forth in the Office Action dated December 1, 2006 is respectfully requested.

ALLOWABLE SUBJECT MATTER

Applicant acknowledges the allowance of claims 1-11.

The examiner indicated that claim 17 would be allowable if rewritten in independent form including all of the limitations of the base claim. Applicant has added new claim 22, which includes all of the limitations of claim 17 and its base claim 12. Applicant has also added claims 23-26, which depend from claim 22. Applicant respectfully submits that claims 22-26 are in condition for allowance.

REJECTIONS UNDER 35 U.S.C. 112

Claims 18-21 stand rejected under 35 U.S.C. 112, first paragraph, as allegedly failing to comply with the written description requirement. The examiner asserted that the matter of "a third plate member" and a "fourth plate member" appear to be new matter not disclosed in the specification.

Applicant respectfully asserts that the examiner is incorrect as the specification indeed discloses third and fourth plate members. For example, in paragraph 0094, the specification states that a "modular device 2202 having an end coupler 2203 can be modularly attached to the device 5 by mating the end coupler 2203 with the borehole 182. ... FIG. 23 shows the end coupler 2203 of the modular device 2202 coupled with the borehole 182. The modular device 2202 is shown only partially in FIGS. 22 and 23, which indicates that the modular device could comprise any of a wide variety of devices. In one embodiment, the modular device 2202 comprises a separate fixation device 5." (Emphasis added.) The specification further discloses that the fixation device 5

comprises first and second plate components (such as at paragraph 0053 and Figs. 1 and 2.) Thus, the specification discloses that the fixation device 5 (which includes first and second plate members) can mate with a modular device 2202 comprised of a separate fixation device 5 that would include third and fourth plate members. Accordingly, the matter of "a third plate member" and a "fourth plate member" are indeed disclosed in the specification and are not new matter.

In view of the foregoing, Applicant submits that the rejection of claims 18-21 under 35 U.S.C. 112 should be withdrawn. Applicant notes that there are no other outstanding rejections of claims 18-21. **Thus, claims 18-21 should be allowed. In the absence of an allowance of claims 18-21, Applicant respectfully submits that the finality of the office action should be withdrawn and that the examiner should issue a new office action that cites a basis of rejection of claims 18-21.**

Claims 14 and 15 stand rejected under 35 U.S.C. 112, second paragraph, as allegedly being indefinite because the term "distraction screw coupler" lacks antecedent basis. Applicant has amended claim 12 to include all of the subject matter of claim 14 and to correct the issue of antecedent basis of the term "distraction screw coupler." Applicant has also canceled claim 14 and amended claim 15 to depend from claim 12. In view of the foregoing, the rejection of claims 14 and 15 under 35 U.S.C. 112 has been overcome.

Rejection of Claims 12, 13, and 16 under 35 U.S.C. 102

Claims 12, 13, and 16 stand rejected under 35 U.S.C. 102 as allegedly being anticipated by U.S. Patent No. 5,681,312 to Yuan. Applicant respectfully submits that claims 12, 13, and 16 recite subject matter that is neither disclosed or suggested by Yuan. For example, Yuan fails to disclose or suggest a distraction screw coupler comprised of a borehole sized to receive therethrough a distraction screw wherein the borehole permits the second plate member to be mounted over a distraction screw having a shank embedded into the second vertebra.

In order to expedite allowance of the application, Applicant has amended claim 12 to include the subject matter of claim 14. Applicant notes that the only rejection of claim 14 was under 35 U.S.C. 112 and this rejection has been overcome. Thus, all rejections of claim 14 have been overcome. **Accordingly, claim 12 should now be in condition for allowance as claim 12 includes all of the subject matter of claim 14 and the examiner did not cite any prior art basis for rejection of claim 14 in the office action. In the absence of an allowance of claim 12, Applicant respectfully submits that the examiner should issue a new office action that cites a basis of rejection of claim 12.**

It is believed that all of the pending claims have been addressed in this paper. However, failure to address a specific rejection, issue or comment, does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above are not intended to be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.


Applicants respectfully submit that the pending claims are now in condition for allowance and respectfully request the same. If the Examiner has any questions

regarding the foregoing, he is cordially invited to contact the undersigned so that any such matters may be promptly resolved.

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Respectfully submitted,

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